

## TRANSCRIPT OF PROCEEDINGS

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1 facility here in January of 1983?  
 2 A Yes, sir.  
 3 Q And who was Jack Wolter?  
 4 A He was Mr. McCaig's boss in Cambridge.  
 5 Q And do you remember a man named James  
 6 Gidley?  
 7 A Yes, sir.  
 8 Q When he retired from W.R. Grace, was he  
 9 disabled from asbestos?  
 10 A I don't remember the exact cause or his  
 11 purpose of retirement. I know that he had  
 12 respiratory problems, but he was also severely  
 13 crippled up with arthritis.  
 14 Q Did he ultimately die at the age of 61?  
 15 A Well, he ultimately died. I don't  
 16 remember his age.  
 17 MR. GRAHAM: Objection.  
 18 BY MR. LEWIS:  
 19 Q Did you folks at W.R. Grace do anything to  
 20 try to keep the public from learning about the cause  
 21 of his death as pulmonary problems associated with  
 22 his work at W.R. Grace?  
 23 MR. GRAHAM: Objection, relevancy,  
 24 Your Honor. As I understand it we're talking about  
 25 1983, which is after all of this transpired.

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1 THE COURT: Sustained.  
 2 MR. LEWIS: May we approach the  
 3 bench?  
 4 (A discussion was held off the record.)  
 5 MR. LEWIS: Would you mark that ZZ.  
 6 THE COURT: What number? ZZ.  
 7 BY MR. LEWIS:  
 8 Q When did Mr. Gidley retire?  
 9 A I don't remember.  
 10 Q Did he retire in January of 1978?  
 11 A I previously said I don't remember.  
 12 Q I'm going to hand you what has been marked  
 13 as Plaintiffs' Exhibit ZZ. Would you look at that  
 14 exhibit and see if that refreshes your recollection  
 15 as to when James Gidley retired.  
 16 A Well, it states here he retired on  
 17 January 31st, 1978.  
 18 Q Was that a time during which Dan Schnetter  
 19 was employed at W.R. Grace?  
 20 A Yes, sir.  
 21 Q And then did you get a copy of this  
 22 letter?  
 23 A It states that I did.  
 24 Q Would you read that whole letter over to  
 25 yourself and then I would like to ask you a couple

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1 more foundational questions.  
 2 A (Deponent complied.)  
 3 Q Do you recall that letter now?  
 4 A Yes, sir, I believe I do.  
 5 Q Was this letter prepared in the ordinary  
 6 and usual course of business of W.R. Grace?  
 7 A Yes, sir, I would say so.  
 8 Q And does it appear to be authentic in  
 9 every respect?  
 10 A Yes, sir.  
 11 MR. LEWIS: I would offer Plaintiffs'  
 12 Exhibit ZZ.  
 13 MR. GRAHAM: I would renew the  
 14 objection, Your Honor.  
 15 THE COURT: Objection is overruled.  
 16 It may be admitted.  
 17 BY MR. LEWIS:  
 18 Q This letter states that after Mr. Gidley's  
 19 death, his wife applied for death benefits; is that  
 20 correct?  
 21 A Apparently so, yes, sir.  
 22 Q And it says that Jim was well known, well  
 23 liked and a model employee, correct?  
 24 A Yes, sir.  
 25 Q And it says that no claim was filed, by

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1 your company, I assume?  
 2 A I assume by his widow.  
 3 Q Well, this is something that confuses  
 4 me here, and you maybe can straighten this out.  
 5 "No claim was filed because of our practice/advice  
 6 (See September 20, 1982, letter Harry Eschenbach to  
 7 J.P. Cahalane), not because his lung problems had  
 8 not been identified or understood."  
 9 Now, when you were on notice of a  
 10 disease -- a lung disease, was it ordinarily your  
 11 practice to file some kind of report with some  
 12 governmental entities to confirm that you knew about  
 13 that?  
 14 A It was our practice ordinarily to file a  
 15 claim on behalf of that employee.  
 16 Q That's exactly the point I'm making.  
 17 Ordinarily you would have filed a claim, right, but  
 18 for some reason you were told not to file a claim by  
 19 Mr. Eschenbach in some kind of a September 20, 1982,  
 20 letter. Do you recall that?  
 21 A No, sir, I don't, but that's what it  
 22 states there.  
 23 Q And even where the lung problems were  
 24 legitimate, as you knew they were in this case, no  
 25 claim was initiated by your company, correct?

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1 A That's what it states, yes, sir.  
 2 Q Now, it says in this last paragraph, "This  
 3 claim is well justified (other than lack of timely  
 4 filing) as others which are being paid. We feel  
 5 some settlement with Mrs. Gidley should be  
 6 negotiated. Our image with our employees and with  
 7 the community would suffer irreparable damage should  
 8 this situation become public knowledge."  
 9 Now, do you -- When you got that letter,  
 10 did you feel that that was appropriate to try to  
 11 keep that out of the public eye?  
 12 A Well, I think it was appropriate that the  
 13 company should have filed a claim and asked that  
 14 that claim be honored.  
 15 Q And do you think, though, that the public  
 16 and the employees had a right to know about the  
 17 danger that was occurring up there?  
 18 MR. GRAHAM: I would object to the  
 19 form of the question. It misinterprets the  
 20 document.  
 21 MR. LEWIS: I'm not referring to the  
 22 document, Your Honor.  
 23 THE COURT: He just asked his  
 24 opinion.  
 25 MR. GRAHAM: If it's not with regard

1 reason I would have felt that way.  
 2 Q Well, the question I have is, was it  
 3 management policy to try to keep the asbestos  
 4 hazards at your mill away from the public eye?  
 5 A No, sir, I don't believe it was.  
 6 Q Did you ever tell the employees about the  
 7 nature and extent of Mr. Gidley's disease and  
 8 death?  
 9 A I don't remember ever doing it, no, sir.  
 10 Q And when this came up, it was after he had  
 11 left the company for three years, correct?  
 12 A Yes, sir.  
 13 Q So he died about three years afterward,  
 14 and -- So whatever Mr. McCaig did, you don't think  
 15 that that was -- keeping out of the public eye was  
 16 consistent with the public policy; is that your  
 17 testimony?  
 18 A That was Mr. McCaig's judgment. I don't  
 19 know that that was public policy. It was certainly  
 20 his judgment to feel that way.  
 21 Q And that letter went to Mr. Jack Wolter?  
 22 A Yes, sir.  
 23 Q Where is he located?  
 24 A Cambridge.  
 25 Q Let's set that exhibit right here, because

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1 to the document, I don't have any objection, Your  
 2 Honor.  
 3 THE COURT: I think he just asked  
 4 him, do you think it's fair, or something like  
 5 that. Okay. You withdraw your objection?  
 6 MR. GRAHAM: Yes, as long as he's not  
 7 referring to the document.  
 8 THE WITNESS: Is your question --  
 9 BY MR. LEWIS:  
 10 Q I'll rephrase the question, sir.  
 11 A Thank you.  
 12 Q I can see I've caused some confusion  
 13 here. Did you ever talk to Mr. McCaig about that  
 14 letter?  
 15 A I don't recall that I did, but I just  
 16 don't remember.  
 17 Q Did it appear to you -- Was it your  
 18 impression from reading that letter that it was  
 19 important to the company for this information  
 20 concerning Mr. Gidley's lung disease not be made  
 21 public?  
 22 A Well, I would -- It would be my opinion  
 23 that the claim should have been -- could have  
 24 been -- should have been filed and should have been  
 25 paid, but I don't know that that's the primary

1 I have more questions on a different subject a  
 2 little bit later.  
 3 MR. LEWIS: Could I have Exhibits 24  
 4 and 25. Thank you very much.  
 5 BY MR. LEWIS:  
 6 Q I'm handing you what has been marked as  
 7 Plaintiffs' Exhibit G-24 and 25. And would you  
 8 review those and advise us as to whether you're  
 9 familiar with either or both of those documents.  
 10 A I have seen both of these documents  
 11 before, and it was not about the time that they --  
 12 that they were written. It was sometime afterward.  
 13 Q Okay. I think that's important to  
 14 establish -- And I'll give you an opportunity to  
 15 explain. Let me ask you a few foundational  
 16 questions and I'll let you explain that. These  
 17 documents are W.R. Grace documents; is that  
 18 correct?  
 19 A Yes, sir.  
 20 Q The first one, G-24 is on the letterhead  
 21 called Cambridge, correct?  
 22 A Yes, sir.  
 23 Q Does that refer to Cambridge,  
 24 Massachusetts?  
 25 A Yes, sir.

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1 Q It's from Peter Kostic to John F. Murphy;  
 2 is that correct?  
 3 A Yes, sir.  
 4 Q From my copy I can't read the date. Can  
 5 you read the date?  
 6 A March 29th, 1966.  
 7 Q And what is the subject of this document?  
 8 A Zonolite Dust Conditions.  
 9 Q And Mr. Murphy, what was his position with  
 10 the company?  
 11 A There are two John F. Murphy's, as you  
 12 will notice on this letter. I believe the John F.  
 13 Murphy at the top was chief engineer of the  
 14 Zonolite -- of Construction Products Division at  
 15 that time, and I believe J.F. Murphy, Junior, was  
 16 vice president of finance of Construction Finance  
 17 Division.  
 18 Q Was that his son?  
 19 A No, sir.  
 20 Q No relation?  
 21 A No relation.  
 22 Q Who was J.D. Kingery?  
 23 A He was a Grace official in New York.  
 24 Q Now this document here, G-24, the  
 25 Cambridge document dated March 29, 1966, was

1 correct?  
 2 A I would think so, yes, sir.  
 3 Q And you have indicated you knew all -- you  
 4 knew all of the gentlemen that are referenced in  
 5 this report, correct?  
 6 A I don't know Mr. Kingery.  
 7 Q But you know Mr. Kingery is an official  
 8 with W.R. Grace?  
 9 A Yes.  
 10 Q You recognize this as a document that  
 11 Mr. Kostic prepared and you saw it before, you  
 12 indicated, in fairness to you, that you may have  
 13 seen it later than March 30, 1966; is that correct?  
 14 A Much later.  
 15 Q When did you first see it?  
 16 A I don't really know. It has been --  
 17 Q Would it have been after you retired?  
 18 A I think so, yes, sir.  
 19 Q That's important. You believe you did not  
 20 see this yourself until after you retired?  
 21 A I don't believe so, no, sir.  
 22 Q Did you see this for the first time in the  
 23 course of litigation?  
 24 A I think so, yes, sir.  
 25 Q And it's not copied to you?

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1 prepared by Mr. Kostic you said, and his position  
 2 was head of safety or something like that?  
 3 A He was a safety engineer in Cambridge.  
 4 Q He basically, in this G-24 -- Exhibit G-24  
 5 summarizes the problems at least -- at least some of  
 6 your problems in Libby; is that correct?  
 7 A That's the way it appears.  
 8 Q He has got things set out by date  
 9 beginning January 23, 1959, and he goes through a  
 10 number of statements ending on February '16 --  
 11 February 15, 1966; is that correct?  
 12 A Yes, sir.  
 13 Q And without going through all of that, the  
 14 last two paragraphs in the body on page -- on the  
 15 fifth page say -- Let me offer this first.  
 16 MR. LEWIS: I would offer Plaintiffs'  
 17 Exhibit G-24 as a document generated by the  
 18 management of W.R. Grace.  
 19 MR. GRAHAM: Objection, competency.  
 20 Doesn't fall within the hearsay exception.  
 21 THE COURT: Objection is overruled.  
 22 BY MR. LEWIS:  
 23 Q Just to make the record very clear, this  
 24 document was prepared in the ordinary and usual  
 25 course of the business of W.R. Grace; is that

1 A No, sir.  
 2 Q Okay. Kostic is a high company official  
 3 concerning safety, however; is that true?  
 4 A Well, I don't know that he would fall  
 5 within the category of a high public official.  
 6 Q Not public; company, I said.  
 7 A Excuse me, high company official. He was  
 8 the safety engineer in Construction Products  
 9 Division. He wasn't head of the division.  
 10 Q All right. That's helpful. But as far as  
 11 the Construction Products Division, which was what  
 12 your mill was part of, he was the chief safety  
 13 engineer; is that correct?  
 14 A Well, he is the one that we saw here the  
 15 most often.  
 16 Q Okay. Was there any other safety engineer  
 17 with the company that came out here?  
 18 A Yes, I believe he had another one that  
 19 came out a time or two, but I don't recall his  
 20 name.  
 21 Q In any event, he said -- In that --  
 22 "Regarding the elaborate studies and tests  
 23 recommended by Dr. Spicer, I feel that they would be  
 24 of greater value to the medical and health  
 25 professions than to us. The fact that employees had

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1 contracted lung conditions is not as important now  
2 as determining if there is a health exposure (by  
3 scheduled air samplings and analysis) and applying  
4 proper controls."

5 When you saw this, finally, did you  
6 understand what he meant by that?

7 A When I saw this, sir, I'm not sure that I  
8 even read it. I just said that I saw it.

9 Q Then the last paragraph he says, in the  
10 body, "I agree with L. Park of Maryland Casualty in  
11 that respirators should not be considered a  
12 substitute for proper engineering controls.

13 Respirators are fine for short periods of time, but  
14 to get a man to wear one eight hours a day is next  
15 to impossible." Do you agree with that statement?

16 A Yes, sir.

17 Q You see the summary of things that Kostic  
18 recommends to attack this problem?

19 A Yes.

20 Q There are four things, right?

21 A Yes.

22 Q But it doesn't include any recommendation  
23 that the men be warned about this hazard, does it?

24 A Well, I still haven't read this.

25 Q Why don't you read those last four to

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1 yourself.

2 A (Pause.) Yes, sir, I've read them.

3 Q That does not recommend that a full  
4 disclosure be made to the men, correct?

5 A It does not, no, sir.

6 Q And it does not recommend a full  
7 disclosure be made to the public, correct?

8 A It does not, no, sir.

9 Q And in fact it doesn't even recommend that  
10 a full disclosure be made to the management on the  
11 ground here in Libby; is that correct?

12 A It does not, no, sir.

13 Q Now going to G-25, which you have in front  
14 of you. This is another W.R. Grace document.  
15 Actually it's not a W.R. Grace document. This is an  
16 office memorandum from the Montana State Board of  
17 Health dated March 31, 1966, to Mr. Bleich; is that  
18 correct?

19 A Yes, sir.

20 Q And who originated this short memorandum?

21 A Benjamin F. Wake.

22 Q This would have been found in the -- in  
23 the documents, the records of W.R. Grace; is that  
24 correct?

25 A Probably, yes, sir.

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1 Q Did you see this at or near the time that  
2 it purports to have been mailed?

3 A No, sir, I don't believe I did.

4 Q Okay. Do you have any doubt that  
5 Mr. Bleich received it?

6 A No, sir.

7 Q In fact it's got numbers stamped on it  
8 indicating that it's -- it was probably -- it was a  
9 W.R. Grace document, right?

10 A It has numbers stamped on it.

11 Q Do you know how the litigation support  
12 team back there in Boston numbers their records?

13 A No, sir, I do not.

14 Q Haven't been consulted on that?

15 A No, sir.

16 Q But you have no doubt that this was  
17 received by Mr. Bleich, do you?

18 A No, sir.

19 MR. LEWIS: I'll offer Plaintiffs'  
20 Exhibit G-25.

21 MR. GRAHAM: Object, hearsay.

22 THE COURT: Pardon, counsel?

23 MR. GRAHAM: Object, hearsay, Your  
24 Honor.

25 THE COURT: Overruled. It may be

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1 entered.

2 BY MR. LEWIS:

3 Q Now, attached to this little short  
4 memorandum from Mr. Benjamin Wake from the State of  
5 Montana is an excerpt advising as to the dangers of  
6 asbestos being documented by a doctor named Irving  
7 Selikoff; is that correct?

8 A Yes, sir.

9 Q And it also advises that an asbestos  
10 cancer link is being studied; is that correct?

11 A Yes, sir, it appears to say that.

12 Q And it documents the fact that, "They  
13 found six to seven times the 'expected' rate of  
14 cancer of the lung. And they also found that  
15 mesothelioma, a form of cancer ordinarily so rare  
16 that it's not separately coded among causes of  
17 death, was found to have 'extraordinarily' high  
18 incidence among asbestos workers." Is that  
19 correct?

20 A It states that, yes, sir.

21 Q That would have been received by  
22 Mr. Bleich in 1966, but did you not -- he did not  
23 share that with you, that's your feeling?

24 A Not that I recall, no, sir.

25 Q You remember I asked you early on whether

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1 you received information concerning the link between  
 2 asbestos and mesothelioma before Mr. Schnetter was  
 3 hired and you said you did not. Does this explain  
 4 why you didn't, because you never saw this? You  
 5 didn't see this document before you retired?  
 6 A No, sir, I don't believe so.  
 7 Q But your boss did, right?  
 8 A Yes, sir.  
 9 Q Do you know of anything he did to bring  
 10 that to the attention to the workers?  
 11 A No, sir.  
 12 Q Now, there is something that -- I  
 13 shouldn't say that. I'm just going to ask you this  
 14 question. You knew by now at least, 1966, that men  
 15 were being diseased up there, right?  
 16 A Yes, sir.  
 17 Q You had men who had been diagnosed with  
 18 serious lung problems by that time, correct?  
 19 A Yes, sir.  
 20 Q Mr. Gidley, had he died yet? Not yet.  
 21 He was still working up there, though. Right?  
 22 A Yes.  
 23 Q And he had been diagnosed as having  
 24 disease already by that time?  
 25 A Apparently, yes.

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1 Q And many others had been diagnosed having  
 2 disease at that time, right?  
 3 A Yes, sir.  
 4 Q And they were -- You were allowing them to  
 5 continue to work up there, right?  
 6 A Yes, sir.  
 7 Q Did you ever look at the fact that men who  
 8 were already diseased were being harmed every day  
 9 that they continued to work up there in that mill?  
 10 Did you ever consider that?  
 11 A I don't know that we would have thought of  
 12 it in that way, no, sir.  
 13 Q Well, think of it -- The question is  
 14 this. With respect to those men that were already  
 15 diseased, you not only knew that there was a chance  
 16 that they were being -- they might be harmed, you  
 17 knew that they were in fact being harmed with every  
 18 breath; is that true?  
 19 A Well, we certainly would have realized  
 20 that there is a chance that they were being harmed  
 21 continuously, yes, sir.  
 22 Q But there was no doubt as to those men who  
 23 were already diseased, they were being harmed. You  
 24 had absolute proof of that in your confidential  
 25 records; is that right?

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1 MR. GRAHAM: Objection, foundation.  
 2 THE COURT: Sustained.  
 3 BY MR. LEWIS:  
 4 Q You had absolute proof that these men had  
 5 been diseased up there at the mill by 1966 at the  
 6 latest; is that true?  
 7 A Yes, sir, that would be true.  
 8 Q And you have told us that none of the  
 9 records you had on that were shared with the men; is  
 10 that true? That's what you told us, correct?  
 11 A Yes, sir.  
 12 Q And so at this point it wasn't just a  
 13 matter of men being exposed to something that might  
 14 injure or kill them, these men were already injured  
 15 and dying, and they were continuing to be exposed  
 16 every day; is that true?  
 17 MR. GRAHAM: I would object again.  
 18 Foundation and relevancy, Your Honor, at this point  
 19 in time. Not a medical witness.  
 20 THE COURT: Are you asking questions  
 21 in regard to the exhibit?  
 22 MR. LEWIS: No, I'm asking him of his  
 23 own knowledge, what he knew. He was the man who did  
 24 all the -- got all the information together, looked  
 25 at all the death certificates.

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1 BY MR. LEWIS:  
 2 Q Is that true, sir?  
 3 A Yes, sir. But I would like to point out  
 4 that this is some time after that.  
 5 Q But you knew that the men were already  
 6 diseased then, right?  
 7 A Some of them, yes, sir.  
 8 Q Well, at least by the time Dan Schnetter  
 9 was hired in 1973, you knew that men were diseased  
 10 then, didn't you?  
 11 A Yes, sir.  
 12 Q And you knew that men had already died  
 13 then, right?  
 14 A Yes, sir.  
 15 MR. GRAHAM: Objection. Your Honor,  
 16 this is repetitive. These have all been asked and  
 17 answered on a number of different occasions.  
 18 THE COURT: I'm going to sustain  
 19 that. You have gone over this, and unless you have  
 20 something different, Counsel, that is repetitious.  
 21 BY MR. LEWIS:  
 22 Q Well, the -- I won't argue with the  
 23 Court. I'll get on to something else. Did you make  
 24 any effort to assign those men who were diseased to  
 25 jobs that did not result in as much exposure to

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1 asbestos?  
 2 A We did not have the authority to do that.  
 3 Q So if a man was diseased already and he  
 4 was a sweeper, he went right back into the old mill;  
 5 is that right?  
 6 A He continued to work as a sweeper, yes,  
 7 sir.  
 8 Q Because that was his job, right?  
 9 A Yes, sir. We did not have the authority  
 10 to reassign him to another job.  
 11 Q You certainly had the authority to tell  
 12 him that if he continued to breathe abnormally  
 13 dangerous asbestos fibers, it might kill him,  
 14 though, right?  
 15 MR. GRAHAM: Argumentative, Your  
 16 Honor.  
 17 THE COURT: Overruled. He may  
 18 answer.  
 19 THE WITNESS: Well, in the course  
 20 of -- in the course of their employment, when they  
 21 took the chest x-rays and the spirometer tests,  
 22 those things would be pointed out to them. If --  
 23 MR. LEWIS: You didn't --  
 24 MR. GRAHAM: Wait.  
 25 MR. LEWIS: I'm sorry.

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1 MR. GRAHAM: Go ahead.  
 2 MR. LEWIS: That is a non-responsive  
 3 answer, though, Your Honor.  
 4 THE COURT: Let him finish the  
 5 question and then we will deal with the -- whether  
 6 it's responsive or not. You may respond,  
 7 Mr. Lovick.  
 8 THE WITNESS: In the course of the  
 9 review of the chest x-rays and the spirometer tests  
 10 that were given to them, these things would be  
 11 pointed out to them and so that they would be --  
 12 they would be informed. These people would also see  
 13 probably some of their friends and neighbors whose  
 14 conditions continued to increase. They would be  
 15 aware that these things could happen.  
 16 BY MR. LEWIS:  
 17 Q Yes, but did you give the spirometry  
 18 tests?  
 19 A I'm one of them that gave spirometry  
 20 tests, yes, sir.  
 21 Q When did do you that?  
 22 A I don't really remember when we started.  
 23 Q When did you last give spirometry tests?  
 24 A I don't remember that, either.  
 25 Q You don't remember ever giving a

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1 spirometry test to Dan Schnetter, do you?  
 2 A Yes, sir, I've seen evidence that I gave  
 3 one to Dan Schnetter.  
 4 Q That you gave one to Dan Schnetter?  
 5 A Yes, sir.  
 6 Q When was that?  
 7 A I don't remember the date.  
 8 Q Was his spirometry test completely  
 9 normal?  
 10 A I don't remember for sure. I believe that  
 11 it was, though.  
 12 Q So you would have no reason to warn Dan  
 13 Schnetter at that time of the spirometry test?  
 14 A If his test was normal, I would not have.  
 15 Q Let's get back to the question -- the  
 16 inquiry I'm trying to get at here. W.R. Grace had  
 17 no program to protect diseased men from additional  
 18 harm; is that correct?  
 19 A Well, I guess it would be correct that we  
 20 did not have a program of that nature, no, sir.  
 21 MR. LEWIS: Plaintiffs'  
 22 Exhibit G-26.  
 23 BY MR. LEWIS:  
 24 Q I'm handing you Plaintiffs' Exhibit Number  
 25 G-26. Do you recognize this document?

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1 A Yes, sir.  
 2 Q What is the date of the document?  
 3 A September 7th, 1966.  
 4 Q And who is L.E. Park?  
 5 A He was with Maryland Casualty Company in  
 6 Baltimore, who are the -- is the company that  
 7 carried the Workers' Comp insurance for Libby  
 8 operation.  
 9 Q Who is Mr. William E. Walker?  
 10 A He was their -- He was an engineer in  
 11 their office in Seattle.  
 12 Q Did you receive this document at or near  
 13 the time of its origination on September 7, 1966?  
 14 A I don't believe -- I think that -- I think  
 15 that I did.  
 16 Q Okay. Do you see where it refers to you  
 17 in the body of the letter?  
 18 A Yes, sir.  
 19 Q Does this document appear in the business  
 20 records of W.R. Grace?  
 21 A I don't know.  
 22 Q You saw it -- How did you come into  
 23 possession of this document?  
 24 A Well, I'm inclined to think that this --  
 25 This document? You handed it to me.

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1 Q No, how did you come into possession of  
2 this document shortly after it was originated, as  
3 you testified?  
4 A I think it would have been hand carried by  
5 Mr. Walker when he visited the Libby office.  
6 Q Mr. who?  
7 A Walker.  
8 Q Now, he came over to visit you at or about  
9 the time of this letter?  
10 A Sometime after that, yes, sir.  
11 Q Do you know whose handwriting is on the --  
12 these two pages?  
13 A No, sir, I don't.  
14 Q Did Mr. Walker do what Mr. Park suggested  
15 here in this letter?  
16 A Yes, sir, I believe he did.  
17 Q He came over to you and talked to you  
18 about some certain personnel that were diseased?  
19 A Yes, sir.  
20 Q And he asked you to basically keep this  
21 under wraps, correct?  
22 A Yes, sir.  
23 Q And he said, I -- "I would therefore  
24 suggest that you take this up with E.D. Lovick at  
25 the time of your visit and if possible without

1 A Yes, sir.  
2 Q Does it say that?  
3 A Yes, sir.  
4 Q And he is referring to Perley Vatland, Rex  
5 Smith, Hal Shrewsbury, Harvey Noble, Lloyd Miller,  
6 Michael McNair, Eitel Ludwig, Edward Gaston and  
7 Walter Baker; is that correct?  
8 A Yes, sir.  
9 Q All of those men were diseased at that  
10 time; is that correct?  
11 A Apparently.  
12 Q How many of those men died of lung  
13 disease?  
14 MR. GRAHAM: I would object on the  
15 basis of foundation and relevancy.  
16 MR. LEWIS: I'll lay some  
17 foundation.  
18 BY MR. LEWIS:  
19 Q Do you know these men?  
20 A Yes, sir.  
21 Q Did you know these men?  
22 A Yes, sir.  
23 Q Did they all work at W.R. Grace?  
24 A Yes, sir.  
25 Q All working men?

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1 anyone else being in on the conversation." Did he  
2 do that?  
3 A Yes, sir.  
4 Q Did you see that no -- Did you yourself  
5 see that no one else heard your conversation?  
6 A What was that?  
7 Q Did you yourself see that no one else  
8 heard your conversation?  
9 A I don't believe anyone else did, no, sir.  
10 Q Did their letter conclude that the reports  
11 of your disease experience here were alarming  
12 because you had nine employees that "... must  
13 definitely be protected over and above the  
14 protection they have been afforded in the past  
15 year"?  
16 A Would you please repeat that question?  
17 Q Did you and -- Did you agree with  
18 Mr. Park's assessment that your reports were  
19 alarming because you had nine employees that  
20 "... must definitely be protected over and above the  
21 protection they had been afforded in the past  
22 year"?  
23 A I don't see where he says that in here.  
24 Q Look at the first full paragraph on the  
25 second page.

1 A Yes, sir.  
2 Q All of them had lung disease?  
3 MR. GRAHAM: Again, I would object on  
4 the basis of foundation as far as medical  
5 capabilities of the witness, Your Honor.  
6 THE COURT: If he knows. If he  
7 knows, he can answer.  
8 THE WITNESS: I believe that all  
9 these men did, yes, sir.  
10 BY MR. LEWIS:  
11 Q Did all of them die of lung disease?  
12 A No, sir.  
13 Q Did a number of them die of lung disease?  
14 A Yes, sir.  
15 Q Which ones?  
16 MR. GRAHAM: Objection, relevancy,  
17 Your Honor.  
18 THE COURT: Overruled.  
19 THE WITNESS: I can't tell you for  
20 sure which ones. I can tell you which ones died.  
21 BY MR. LEWIS:  
22 Q All right. If you don't know, you don't  
23 know. We will get on to another subject. That's  
24 fair. But you do know that they all had lung  
25 disease?

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1 A No, sir, I know some of them did.  
 2 MR. LEWIS: Plaintiffs' Exhibit G-26  
 3 offered.  
 4 MR. GRAHAM: We would object on the  
 5 basis of it being hearsay, Your Honor. Not within  
 6 the exception to the business records rule.  
 7 THE COURT: Overruled. Exhibit 26 --  
 8 G-26 may be admitted -- is admitted over objection.  
 9 MR. LEWIS: Can I have a minute to  
 10 confer, Your Honor?  
 11 THE COURT: Pardon? Oh, yeah.  
 12 BY MR. LEWIS:  
 13 Q Did the government ever ask you folks for  
 14 information concerning the danger to your  
 15 employees?  
 16 A No, sir, not that I know of.  
 17 Q Department of Health didn't -- United  
 18 States Department of Health didn't ask you for any  
 19 information?  
 20 A Yes, sir, the Department of Health asked  
 21 us for some information one time.  
 22 Q And did they ask you for information  
 23 concerning mortality rates on the part of your  
 24 workers who were exposed to asbestos?  
 25 A No, sir, I don't believe that's what they

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1 asked for.  
 2 Q They didn't ask for your cooperation  
 3 concerning a study of the health conditions of your  
 4 workers who were exposed to tremolite?  
 5 A Yes, sir, they did.  
 6 Q Did you cooperate with that study?  
 7 A Yes, sir.  
 8 Q Did you cooperate immediately with the  
 9 study?  
 10 A No, sir.  
 11 Q Initially, you determined not to  
 12 cooperate; is that true?  
 13 A Yes, sir.  
 14 Q There was what, a year or so delay before  
 15 you actually cooperated?  
 16 A Well, it was approximately a year, yes,  
 17 sir.  
 18 Q Did you tell your employees that the  
 19 Department of Health, Education and Welfare were  
 20 inquiring as to the danger on Vermiculite Mountain?  
 21 MR. GRAHAM: Objection --  
 22 THE WITNESS: That is not what they  
 23 told us.  
 24 BY MR. LEWIS:  
 25 Q Did you tell your employees about the fact

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1 that there were inquiries concerning the health  
 2 hazards associated with asbestos on Vermiculite  
 3 Mountain?  
 4 A That's not what the inquiry was, no, sir.  
 5 Q Was it just about dust controls?  
 6 A No, sir.  
 7 Q Now, go back to Exhibit G-40.1. I think  
 8 it's already in evidence. If you can find it.  
 9 (Pause.) Do you have that, sir?  
 10 A Yes, sir.  
 11 Q Was this report of March 3, 1969, from  
 12 Schneider to Vining, the result of the inquiry from  
 13 the Department of Health, Education and Welfare?  
 14 A I don't know.  
 15 Q This was a Personal and Confidential,  
 16 Insitu and Environmental Dust Controls for  
 17 Vermiculite Mining Operations report generated by  
 18 Eaton, Kujawa and Kostic and under cover letter of  
 19 Schneider; is that correct?  
 20 A Yes, sir.  
 21 Q And at the time of this report in 1969,  
 22 you still had a significant problem at the old dry  
 23 mill, correct?  
 24 A Yes, sir. Yes.  
 25 Q And in fact you never really got the old

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1 dry mill in shape, and the only way you could really  
 2 get that -- make that place safe was to shut it  
 3 down; is that true?  
 4 A Yes, sir.  
 5 Q And anybody who worked up at that old dry  
 6 mill was exposed to high levels of asbestos fibers;  
 7 is that true?  
 8 A Yes, sir.  
 9 Q And that was true in 1973 and 1974; is  
 10 that correct?  
 11 A Yes, sir, that's correct.  
 12 Q And if Dan Schnetter worked up there, he  
 13 was exposed to a high level of asbestos fibers; is  
 14 that correct?  
 15 A Yes, sir.  
 16 MR. LEWIS: Now, I would like to show  
 17 you G-40.2.  
 18 BY MR. LEWIS:  
 19 Q There you go, sir. For purposes of  
 20 identification, G-40.2 is a June 19, 1996 (sic),  
 21 document; is that correct?  
 22 A 'Sixty-nine, sir.  
 23 Q You're right, 1969. I told everybody I  
 24 couldn't see through these glasses, Your Honor.  
 25 This is from Peter Kostic; is that correct?



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1 A Yes, sir.  
 2 Q And can you tell who it's addressed to by  
 3 the form of this letter?  
 4 A It's addressed to H.A. Brown.  
 5 Q And is there a copy to R.A. Kulberg?  
 6 A Yes, sir.  
 7 Q And what was his position with the  
 8 company?  
 9 A I believe that he was Peter Kostic's boss.  
 10 Q Would he have had responsibility in the  
 11 area of safety of your employees?  
 12 A Yes, sir, I -- I believe so.  
 13 Q And Mr. Brown, what was his position?  
 14 A He was executive vice president of  
 15 Construction Products Division.  
 16 Q One step below Mr., what, Sterrett, or who  
 17 was it at that time?  
 18 A Mr. Vining.  
 19 Q Mr. Vining. You remember I asked you the  
 20 question about putting sick men back in the  
 21 workplace exposed to asbestos?  
 22 A Yes, sir.  
 23 Q Does Kostic take up that subject in this  
 24 letter?  
 25 A I would like to point out I've never seen

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1 this letter before right now, so --  
 2 Q Is that right?  
 3 A That's correct.  
 4 Q You don't doubt that it's a W.R. Grace  
 5 record, do you?  
 6 A No, sir.  
 7 Q Do you agree it was prepared in the  
 8 ordinary and usual course of business?  
 9 A I would think so, yes, sir.  
 10 Q And Kostic was a -- at least a safety  
 11 engineer for W.R. Grace?  
 12 A Yes, sir.  
 13 MR. LEWIS: Offer Plaintiffs'  
 14 Exhibit G-40.2.  
 15 MR. LEWIS: Objection, competency,  
 16 hearsay. Not within the business records exception,  
 17 Your Honor.  
 18 THE COURT: Overruled. It may be  
 19 admitted.  
 20 BY MR. LEWIS:  
 21 Q I guess rather than ask you questions  
 22 about this letter, it may be best for me to read  
 23 it. You have never seen this letter before?  
 24 A Not that I recall, no.  
 25 MR. LEWIS: May I have permission to

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1 read the letter?  
 2 MR. GRAHAM: Object. The letter  
 3 speaks for itself, Your Honor. It has been offered  
 4 as an exhibit and admitted as an exhibit.  
 5 THE COURT: Overruled. He may read  
 6 the letter.  
 7 MR. LEWIS: Thank you, sir.  
 8 BY MR. LEWIS:  
 9 Q "Regarding our deliberations and questions  
 10 having to do with pneumoconiosis cases, here are a  
 11 few of my thoughts: If a man has a definite case of  
 12 pneumoconiosis, is it prudent to put him to work in  
 13 an environment containing fibers in air in  
 14 quantities less than the threshold limit? How many  
 15 more years could he be expected to live under such  
 16 circumstances as compared to complete removal from  
 17 such environment? Should he be required to wear  
 18 approved respiratory protective equipment?  
 19 Two: "What are some of the things he  
 20 should be advised to help him keep as physically fit  
 21 as possible, i.e. no smoking, vitamins, diet, etc.?  
 22 How much should (he) be told of his condition?  
 23 Three: "Is disability retirement an  
 24 acceptable approach? At what stage and/or age  
 25 should this be considered? What are some of the

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1 rules covering disability retirement?  
 2 Four: "What should be our overall program  
 3 of chest x-ray examinations? Who should interpret  
 4 the pictures? How should comparison with previous  
 5 pictures be handled? I shall be glad to set up a  
 6 meeting with J-M's top medical and workmen's  
 7 compensation personnel whenever you're ready."  
 8 Peter Kostic.  
 9 Now, in fairness to you, sir, that letter  
 10 was never forwarded to you, correct?  
 11 A I don't ever recall seeing it before  
 12 today, sir.  
 13 Q And remarkably it only pertains to the  
 14 problems here in Libby; is that true?  
 15 A I don't think that's true.  
 16 Q Well, where else did you have asbestos  
 17 exposure?  
 18 A At every expanding plant.  
 19 Q Oh, you did. So you sent the vermiculite  
 20 out from here in its concentrate form and it was  
 21 expanded, right?  
 22 A Yes, sir.  
 23 Q And where were your expansion plants?  
 24 A Located all over the country. There were  
 25 about -- between 20 and 30 of them in the United

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1 States.  
 2 Q And so you never told the men at the  
 3 expansion plants about these harmful effects of  
 4 asbestos either, did you?  
 5 A No.  
 6 MR. GRAHAM: Objection, relevancy,  
 7 Your Honor.  
 8 THE COURT: Sustained.  
 9 BY MR. LEWIS:  
 10 Q For certain you never told the men here.  
 11 You have told us that, right?  
 12 MR. GRAHAM: Objection, repetitive,  
 13 Your Honor.  
 14 BY MR. LEWIS:  
 15 Q Did you tell --  
 16 THE COURT: Overruled. That one is  
 17 overruled. You may answer.  
 18 THE WITNESS: Well, the people, the  
 19 men that were here, we never had a program of  
 20 telling them as such. But the men that were here,  
 21 they certainly had, by observation and so on and  
 22 association -- they would have known of these  
 23 things, and I'm sure that many of them were told on  
 24 an individual basis.  
 25 BY MR. LEWIS:

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1 Q Some may have learned that their men --  
 2 their brethren were diseased and dying, by looking  
 3 at them, right?  
 4 A Yes, sir.  
 5 Q Many of the men were diseased and then  
 6 they'd died after they left the company, after they  
 7 retired, correct?  
 8 A Yes, sir.  
 9 Q And that's because of the latency of this  
 10 particular kind of disease, right?  
 11 A In some cases, yes, sir.  
 12 Q For example, Dan Schmetter left your  
 13 company in 1983 having --  
 14 MR. SLOVAK: '81.  
 15 BY MR. LEWIS:  
 16 Q -- in 1981, having no reason to believe  
 17 that he was going to get this disease. He had no  
 18 reason to know that, did he?  
 19 A I don't know.  
 20 Q And the men were getting sick, but just  
 21 seeing that they were sick may not have told them  
 22 why they were getting sick; do you agree with that?  
 23 A Yes, sir.  
 24 Q Was it nuisance dust or was it something  
 25 worse than nuisance dust, they might not have been

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1 able to figure that out, right?  
 2 A It could have been both.  
 3 Q But in any event, did the management  
 4 people back in Boston ever tell you about these  
 5 considerations concerning exposing diseased men to  
 6 more asbestos --  
 7 MR. GRAHAM: You know, I would  
 8 object. It misstates the document that was read by  
 9 counsel, which doesn't even mention asbestos.  
 10 BY MR. LEWIS:  
 11 Q Well, do you understand pneumoconiosis to  
 12 be a disease associated with asbestos?  
 13 A I understand pneumoconiosis to be a  
 14 disease of the lungs, yes, sir.  
 15 Q And in the context of this letter, there  
 16 is no question that this pneumoconiosis is just  
 17 another problem, a lung problem related to exposure  
 18 to vermiculite; is that true?  
 19 MR. GRAHAM: I would object.  
 20 Foundation.  
 21 BY MR. LEWIS:  
 22 Q Is that true?  
 23 THE COURT: Overruled. He may  
 24 answer, if he knows.  
 25 THE WITNESS: It could -- It could

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1 have been -- I don't know what all the cause of that  
 2 disease could be. It could probably be several  
 3 causes.  
 4 BY MR. LEWIS:  
 5 Q Well, is pneumoconiosis frequently  
 6 associated with asbestos exposure?  
 7 MR. GRAHAM: Again, I would object.  
 8 Foundation, Your Honor.  
 9 MR. LEWIS: I'll ask foundation.  
 10 BY MR. LEWIS:  
 11 Q Do you know whether pneumoconiosis is  
 12 frequently associated with asbestos exposure?  
 13 A I would have to say I really don't know.  
 14 Q Haven't you filed reports indicating that  
 15 one of the problems associated with exposure to  
 16 asbestos is pneumoconiosis?  
 17 A Yes, sir.  
 18 Q Where did you get that information if you  
 19 didn't know what you were saying in those reports?  
 20 I mean, let me rephrase the question. If you didn't  
 21 know that pneumoconiosis was associated with  
 22 asbestos exposure, where did you get the information  
 23 to put that in your reports?  
 24 A My point is, is that these people that  
 25 were subject to this were shown to have

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1 pneumoconiosis. Those conditions may have been  
2 caused by asbestos or they may have been caused by  
3 something else.  
4 Q Okay. I think that bags the question  
5 here. I will ask you this. Regardless of whether  
6 it was asbestosis or pneumoconiosis or any lung  
7 disease, were you ever advised by the high  
8 management officials back in Boston of Mr. Kostic's  
9 concern that these people that had diseased lungs  
10 not be exposed to more asbestos?

11 A I don't believe so, no, sir.

12 Q Were you ever advised by management  
13 officials in Boston or Cambridge of Mr. Kostic's  
14 concern that men with pneumoconiosis, with lung  
15 problems, be advised to keep as physically fit as  
16 possible, take vitamins, diet or whatever they can  
17 do to minimize the impact of their disease? Ever  
18 advised of that?

19 A I don't believe so.

20 THE COURT: Would this be a  
21 convenient place to stop, counsel?

22 MR. LEWIS: Yes, sir

23 THE COURT: Very well. Ladies and  
24 gentlemen of the jury, we will take a 15 minute  
25 recess until 3:00. Once again you're admonished not

1 Honor.

2 MR. LEWIS: Most strenuous objection.

3 MR. GRAHAM: Not very strenuous.

4 Actually pretty quiet.

5 MR. LEWIS: Okay.

6

7 CROSS-EXAMINATION CONTINUED

8 BY MR. LEWIS:

9 Q Just for clarification purposes, I'm  
10 handing you Plaintiffs' Exhibit 47. Earlier today  
11 we talked about Exhibit 47.1. Do you have that  
12 there?

13 THE COURT: I think they are in the  
14 order that they were offered.

15 BY MR. LEWIS:

16 Q Do you recall testifying about  
17 Exhibit 47.1, that you don't think you ever received  
18 this document concerning the adverse effects of  
19 smoking and asbestos back at the time that the  
20 document was issued on March 31, 1971?

21 A No, sir, I don't believe I did.

22 Q Okay. I would like you to look at  
23 document number 47. G-47. It's a very poor copy.  
24 Can you read it? Don't read it out loud, but can  
25 you read it?

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1 to discuss this case among yourselves or with anyone  
2 else, nor allow anyone to discuss the case with  
3 you. Nor shall you express or form any opinion  
4 regarding the matter until it's finally submitted to  
5 you for your decision.

6 (A recess was held in the proceedings.)

7

8 THE COURT: Mr. Lewis, you may  
9 continue.

10 MR. LEWIS: Thank you Your Honor.  
11 Could I have Exhibit 47, please.

12 (A recess was held in the proceedings.)

13 MR. LEWIS: What exhibit were we on  
14 when we finished here?

15 THE CLERK: 40.2.

16 MR. LEWIS: 40.2. I apologize, Your  
17 Honor, for taking so long, but the only way we can  
18 get this stuff in is -- we have a lot of documents  
19 here and Mr. Lovick is the only person from W.R.  
20 Grace that is here. We will try to speed it up as  
21 fast as we can. 40.2 is in evidence; is that  
22 correct, Your Honor?

23 THE COURT: Yes, over Mr. Graham's  
24 objection.

25 MR. GRAHAM: That's correct, Your

1 A Yes, I can read most of it.

2 Q Okay. That document is also from  
3 Mr. Brown; is that correct?

4 A Yes, sir.

5 Q And can you tell who that goes to?

6 A Well, it's written to E.D. Lovick and  
7 O.F. --

8 Q It's written to you, right?

9 A It's written to me and someone else, and I  
10 can't read the second name. I don't know the second  
11 name. No, sir. I can't read it.

12 Q Does that appear to be the -- The date of  
13 that document, can you tell what that document  
14 says? Is it March 18, 1971?

15 A It looks like that's the date, yes, sir.

16 Q And it's from Mr. Brown, and there are  
17 other people copied. And is that a document that  
18 was prepared during the ordinary and usual course of  
19 the business of W.R. Grace and Company?

20 A I would say so, yes, sir.

21 Q And it is addressed to you, but from your  
22 earlier testimony, I'm not sure whether you received  
23 it or not, and I would like you to just read it over  
24 to yourself, and then I'll ask you whether you  
25 received it.

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1 A (Pause.) Yes, sir. I honestly can't say  
 2 whether I remember this or not.  
 3 Q If you had received it, would it have  
 4 informed you of the synergistic effect of cigarette  
 5 smoking and asbestos exposure as early as March of  
 6 1971?  
 7 A Yes, sir.  
 8 MR. GRAHAM: Objection, the document  
 9 speaks for itself and calls for speculation on his  
 10 part as to what he may have learned from the  
 11 document, if it goes beyond the document itself.  
 12 THE COURT: Well, the document is  
 13 addressed to him. Even though he says he doesn't  
 14 recall it, it's a document. Overruled. You may  
 15 answer.  
 16 THE WITNESS: Yes, sir, it would  
 17 have.  
 18 MR. LEWIS: Offer G-47.  
 19 THE COURT: Objection, I assume,  
 20 Counsel?  
 21 MR. GRAHAM: No, I have no objection  
 22 to the counsel. It was just the question that I had  
 23 the objection to.  
 24 THE COURT: You don't object to it  
 25 being admitted?

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1 MR. GRAHAM: No.  
 2 THE COURT: Okay.  
 3 BY MR. LEWIS:  
 4 Q It is copied to Peter Kostic; is that  
 5 correct?  
 6 A I can't tell.  
 7 Q How about D.G. Powell?  
 8 A I don't know who that is.  
 9 Q And it's somebody from NRA; is that  
 10 correct? J.F. Brower from Enoree? Was there a J.F.  
 11 Brower in Enoree?  
 12 A That's not familiar to me. That's where  
 13 our other plant is -- was -- is.  
 14 Q That company -- That letter was a report  
 15 from the United States Department of the Interior,  
 16 Bureau of Mines, correct?  
 17 A That's extracts from that report.  
 18 Q Okay. And that suggests that asbestos is  
 19 a carcinogen; is that correct?  
 20 A Yes, sir.  
 21 Q And you already knew that by this time,  
 22 1971?  
 23 A Yes, sir.  
 24 Q The report, though, itself is actually  
 25 dictated -- was prepared in 1969 and then extracted

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1 by H.A. Brown, a W.R. Grace official on March 3,  
 2 1971; is that correct?  
 3 A That's what it states, yes, sir.  
 4 Q Have you ever seen that report before? Or  
 5 that extracts, to be more accurate?  
 6 A I don't remember.  
 7 Q But it documented as early as 1971 the  
 8 synergistics -- in fact, it has a paragraph entitled  
 9 synergistics?  
 10 A Right.  
 11 Q Do you know what synergism means?  
 12 A One or more different elements or one or  
 13 more different matters combined -- Combined, they  
 14 tend to exacerbate the influence of either one of  
 15 them alone.  
 16 Q It's a little bit like two and two doesn't  
 17 equal four, two and two equals 24, right? Something  
 18 like that?  
 19 A Something like that, yes, sir.  
 20 Q All right.  
 21 MR. LEWIS: Plaintiffs' Exhibit 48 --  
 22 G-48. Excuse me.  
 23 BY MR. LEWIS:  
 24 Q Handing you what has been marked as  
 25 Plaintiffs' G-48. Have you seen that document

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1 before?  
 2 A I don't recall having seen it before, no,  
 3 sir.  
 4 Q Was it -- Does it purport to be routed to  
 5 Libby?  
 6 A Well, no, it does not.  
 7 Q Well, was R.L. Olivario in Libby at the  
 8 time?  
 9 A Yes, sir. A copy of it is --  
 10 Q That's what I mean, a copy would have been  
 11 routed?  
 12 A Yes, sir.  
 13 Q The date of it is October 21, 1971,  
 14 correct?  
 15 A Yes, sir.  
 16 Q Does it indicate problems with fibers at  
 17 the plant or is it something that's beyond your  
 18 knowledge?  
 19 A Well, it -- It regards fibers at the  
 20 plant, yes, sir.  
 21 Q Is it a document that was prepared in the  
 22 ordinary and usual course of the business of W.R.  
 23 Grace?  
 24 A I believe so, yes, sir.  
 25 Q Does it have Cambridge to the top?

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1 A Yes, sir.  
 2 Q It's from Peter Kostic to H.A. Brown,  
 3 right?  
 4 A Yes, sir.  
 5 Q It talks about somebody by the name of Rex  
 6 Smith; do you see that?  
 7 A Yes, sir.  
 8 Q Is there some problem with something  
 9 related to Rex Smith there, or do you understand  
 10 that?  
 11 A Well, what it appears that -- the Bureau  
 12 of Mines were here and took dust samples and Rex  
 13 Smith at the same time took dust samples along with  
 14 them, which was a very usual thing for our people to  
 15 do, to see that there was a correlation. And in  
 16 this case, there was a vast difference between the  
 17 samples that Rex Smith took and the ones that the  
 18 Bureau of Mines took.  
 19 Q Who was Rex Smith?  
 20 A He was one of our employees, and he took  
 21 dust samples for us.  
 22 Q And his dust samples in 1970 showed a  
 23 lower asbestos content than the Bureau of Mines,  
 24 right?  
 25 A These did, yes, sir.

1 was the letter to Mr. Bushell from Mr. O.F. Stewart,  
 2 and you testified that that was prepared in the  
 3 ordinary and usual course of the business of W.R.  
 4 Grace and maintained in the ordinary and usual  
 5 course of business of W.R. Grace; is that true?  
 6 A Yes, sir.  
 7 MR. LEWIS: Offer G-24.4.  
 8 MR. GRAHAM: Object as hearsay, Your  
 9 Honor, without -- outside the scope of the business  
 10 records rule.  
 11 THE COURT: Objection is overruled.  
 12 BY MR. LEWIS:  
 13 Q The next document is 20.5. Do you have  
 14 G-20.5 in front of you, sir?  
 15 A Yes, sir.  
 16 Q Does that appear to be a Zonolite  
 17 pre-printed interoffice correspondence memo?  
 18 A Yes, sir.  
 19 Q It indicates that Zonolite is a division  
 20 of W.R. Grace and Company?  
 21 A Yes, sir.  
 22 Q It's a March 2, 1965, document?  
 23 A Yes, sir.  
 24 Q From J.A. Kelley, who -- in Chicago, who  
 25 was the -- at that time was president of the

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1 Q Were you able to figure out or determine  
 2 what happened?  
 3 A No, sir.  
 4 Q So there was never any conclusion on  
 5 that?  
 6 A I don't know whether there is or not, but  
 7 not to my knowledge there was not.  
 8 Q You just knew of the incident, but you  
 9 didn't know of the result; is that fair?  
 10 A I'm not even sure that I knew of the  
 11 incident.  
 12 Q So you can't -- other than to say that  
 13 this is a business record to your company, you  
 14 really don't know anything about this document?  
 15 A No, sir, I do not.  
 16 Q Or this discrepancy? Let's call it a  
 17 discrepancy.  
 18 A No, sir, I do not.  
 19 MR. LEWIS: There is a couple of  
 20 exhibits, Your Honor, that we talked about but we  
 21 never offered. They are Plaintiffs' Exhibits 20.4  
 22 and 20.5. And I'm going to re-lay foundation just  
 23 to be perfectly careful here.  
 24 BY MR. LEWIS:  
 25 Q We talked extensively about 20.4. That

1 Zonolite Division, right?  
 2 A Yes, sir.  
 3 Q To his supervisor, Mr. Blackwood, in  
 4 Cambridge, Massachusetts?  
 5 A Yes.  
 6 Q Do you have any reason to doubt that this  
 7 was prepared in the ordinary and usual course of the  
 8 business at W.R. Grace?  
 9 A No, sir.  
 10 Q And does it appear to be a document that  
 11 would be regularly maintained in the business  
 12 records of W.R. Grace?  
 13 A Yes, sir.  
 14 MR. LEWIS: Offer Exhibit 20.5.  
 15 MR. GRAHAM: The same hearsay  
 16 objection, Your Honor.  
 17 THE COURT: Objection is overruled.  
 18 BY MR. LEWIS:  
 19 Q And this refers to correspondence from  
 20 Maryland Casualty Company; is that correct?  
 21 A Yes.  
 22 Q It says, "Dear George: I'm attaching  
 23 correspondence from Maryland Casualty Company  
 24 regarding the Libby situation with regard to  
 25 possible risk of health hazard. We are going to

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1 follow Maryland Casualty's recommendations, but we  
2 are going to try to get them to pay the bill since  
3 we will be unable to monitor the activities of their  
4 consultant. As you can see from Dr. Spicer's  
5 letter, it is a complex problem which we have known  
6 all along. The only real answer is to eliminate  
7 exposure." Is that what your president said on that  
8 date?

9 A Yes, sir.

10 Q Now we talked briefly about Mr. Oliverio.  
11 When did he come to Libby to work?

12 A In -- I believe it was 1971.

13 Q And what was his position when he came in  
14 '71?

15 A He was general manager of the Libby  
16 operation.

17 Q Had he ever worked at Libby before?

18 A No, sir.

19 Q And how long did he work here in Libby?

20 A Until 1979.

21 Q Did he work in the office?

22 A Yes, sir.

23 Q Was he -- Did you inform him of the health  
24 hazards of asbestos that were diseasing your men?

25 A Yes, sir, he would have become familiar

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1 with that.

2 Q Now, he's not available now; is that  
3 right?

4 A No, sir, he's not.

5 Q Is he deceased?

6 A Yes, sir.

7 Q Do you know what caused his death?

8 MR. GRAHAM: Objection, relevancy,  
9 Your Honor.

10 BY MR. LEWIS:

11 Q If you know.

12 THE COURT: If you know. Overruled.

13 THE WITNESS: As I understand it, he  
14 died of --

15 BY MR. LEWIS:

16 Q To be fair, I don't know what the answer  
17 is, but he didn't die of anything related to  
18 asbestos?

19 A No, sir.

20 Q Okay. But he's not available for this  
21 trial that went on from the time he became president  
22 until '71 until he left, right?

23 A Yes. As I understand it, he died of  
24 pancreatic, liver cancer.

25 Q You don't know of anything that

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1 Mr. Oliverio did to bring -- He never told the men  
2 about this problem, did he, that you saw?

3 A I don't know what he told the men.

4 MR. LEWIS: G-51, please. G-51.

5 BY MR. LEWIS:

6 Q There you go, sir. Plaintiffs'

7 Exhibit G-51 is a letter on Cambridge letterhead  
8 dated June 5, 1972, from Mr. Eschenbach to  
9 Mr. Vining; is that true?

10 A Yes, sir.

11 Q And the subject of the letter is Asbestos  
12 Update; is that correct?

13 A Yes, sir.

14 Q And did you get a copy of this letter?

15 A No, sir.

16 Q Have you ever seen this letter before?

17 A I don't believe so, no, sir.

18 Q By 1972, you knew full well by then, as  
19 you testified earlier, that you had a significant  
20 disease problem associated with asbestos exposure at  
21 your plant, right?

22 A Yes, sir.

23 Q Okay. And was there any doubt in your  
24 mind that the disease to your men's lungs was being  
25 caused by asbestos exposure?

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1 A There was no doubt that -- to me that it  
2 was being caused by dust cancer -- or dust  
3 exposure.

4 Q And in 1971, you had already seen some of  
5 the men who worked for you who unfortunately passed  
6 away because of lung disease?

7 MR. GRAHAM: Objection, repetitive,  
8 Your Honor.

9 MR. LEWIS: I'm laying some  
10 foundation here, Your Honor --

11 THE COURT: Proceed.

12 MR. LEWIS: -- for a question  
13 regarding this document.

14 THE WITNESS: Yes, sir, that's true.

15 BY MR. LEWIS:

16 Q Mr. Eschenbach, at that time, was charged  
17 with some kind of public health -- company health  
18 responsibility; is that right?

19 A Yes, sir.

20 Q In 1972 he would have been a man who had  
21 responsibilities to see that the workplace was as  
22 safe as possible. That was part -- the primary  
23 function of his job -- One of them?

24 A I would think that would be part of his  
25 job, yes, sir.

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1 Q He was -- He was an industrial hygienist,  
2 toxicologist or some sort of thing?  
3 A Yes, sir.  
4 Q Do you know why Mr. Eschenbach would be  
5 involved with claims?  
6 A No, sir.  
7 Q Do you know why Mr. Eschenbach would try  
8 to help the company develop defenses to tremolite  
9 asbestos claims when everybody here knew that the  
10 disease was being caused by your tremolite  
11 asbestos?  
12 A No, sir, I don't.  
13 Q Now, Plaintiffs' Exhibit G-51 was marked  
14 Personnel and Confidential; is that correct?  
15 A Yes, sir.  
16 Q Does it appear to have been prepared in  
17 the ordinary and usual course of the business?  
18 A I believe so, yes, sir.  
19 Q And Mr. Vining was the highest official in  
20 the Construction Products Division at the time?  
21 A Yes, sir.  
22 Q Do you know why -- Let me offer the  
23 exhibit first.  
24 MR. LEWIS: Offer Plaintiffs'  
25 Exhibit G-51.

1 problems; is that correct?  
2 A Yes, sir.  
3 Q Dale Thompson?  
4 A Yes, sir.  
5 Q He was a management official, correct?  
6 A Yes, sir.  
7 Q Would you look -- Turn to page 2 of  
8 Mr. Eschenbach's letter to Mr. Vining. And I'm  
9 going to read the second full paragraph. "However,  
10 the issue has become emotional that decisions  
11 concerning the TLV, etc are not based rationally  
12 upon knowledge. It is a foregone conclusion that  
13 the TLV will be 2 fibers (greater than 5 microns)  
14 per milliliter, and some unions and researchers  
15 (Selikoff) pushing for 1 or 0 fiber levels.  
16 "Lack of significant reliable information  
17 to oppose this type of regulation will allow the  
18 panic button set to do pretty much as they wish. I  
19 believe that we had better start building up a base  
20 of -- a bank of knowledge on tremolite, its  
21 properties, etc. as well as the medical data to show  
22 that Libby has no significant problems. Failure to  
23 do so could result in a total lack of defense if  
24 someone decides to make allegations concerning  
25 'tremolite asbestos.'" Do you see that?

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1 MR. GRAHAM: We would make the same  
2 hearsay objections, your Honor.  
3 THE COURT: Okay, overruled. They  
4 will be admitted.  
5 BY MR. LEWIS:  
6 Q Now, you had already, by this time,  
7 provided high management officials in Boston with  
8 extensive data concerning the health experience of  
9 diseased individuals at this facility, correct?  
10 A I believe so, yes, sir.  
11 Q You provided them with copies of death  
12 certificates, correct?  
13 A Yes.  
14 Q Showing the cause of deaths, some of them  
15 pulmonary problems; is that correct?  
16 A Yes, sir.  
17 Q You had provided them with lists of line  
18 workers who were diseased with lung problems as a  
19 result of asbestos before 1972, correct?  
20 A Yes, sir.  
21 Q And had you provided the information even  
22 as to management people at the request of the  
23 company?  
24 A I believe so, yes, sir.  
25 Q For example, Mr. Thompson died of lung

1 A Yes, sir.  
2 Q Now, based on what you knew at the time,  
3 you could not in good faith agree with the  
4 suggestion here that you should be developing a bank  
5 of knowledge to show that asbestos was not  
6 dangerous; is that true?  
7 A I would like to point out that this is  
8 Harry Eschenbach's letter and I've never seen it  
9 until right now.  
10 Q But it did occur in 1972, after you had  
11 provided a company with extensive data and extensive  
12 reports on the problem that existed here, right?  
13 A Yes, sir.  
14 Q And you said that Mr. Eschenbach came out  
15 here many times, correct?  
16 A Yes, sir.  
17 Q And you said there was no question but  
18 there was a huge -- or a significant problem here,  
19 right?  
20 A Yes, sir.  
21 Q And nobody ever showed that there was  
22 medical data or other evidence indicating that there  
23 was no significant problem after 1972, as far as you  
24 know; is that true?  
25 A I don't know of any, no, sir.

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1 Q You don't doubt, as you sit here right  
 2 now, you know very well that this has been a very  
 3 significant problem and it continues to be a  
 4 significant problem; is that true?  
 5 A Yes, sir, I believe that's true.  
 6 Q Okay.  
 7 MR. LEWIS: 30.1 and 47.2 and 50.  
 8 (Pause.)  
 9 BY MR. LEWIS:  
 10 Q I'll let you start looking at these, sir.  
 11 Directing your attention to Plaintiffs'  
 12 Exhibit G-30.1, is this a January 18, 1968, letter  
 13 from the Department of Health, Education and  
 14 Welfare, to Mr. Peter Kostic of the Dewey and Almy  
 15 Division of W.R. Grace and Company?  
 16 A Yes, sir.  
 17 Q And do you recognize Jeremiah R. Lynch as  
 18 the author of this document?  
 19 A Yes, sir.  
 20 Q Do you know who Jeremiah Lynch is?  
 21 A He was an employee of the Department of  
 22 Health, Education and Welfare in Cincinnati and he  
 23 had visited Libby.  
 24 Q Did you ever see a copy of this document?  
 25 A I don't --

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1 Q Look in the upper left-hand corner. Do  
 2 you have any writing in the upper left-hand corner?  
 3 A Yes, sir, it states, Carbon copies to  
 4 Lovick and Stewart.  
 5 Q Do you recall receiving this document?  
 6 A No, sir, I don't recall.  
 7 Q Do you recognize it as a document that was  
 8 mailed to Kostic and would be in the regular and  
 9 usual -- maintained in the regular and usual course  
 10 of the business of W.R. Grace and Company?  
 11 A Yes, sir.  
 12 Q Were you made aware of the results of this  
 13 letter or the content of this letter by Kostic?  
 14 A Well, I think he made me aware of it by  
 15 sending me a copy and I have -- I don't recall  
 16 receiving it, but I --  
 17 Q Do you have any doubt that you did receive  
 18 it?  
 19 A No, sir, I don't.  
 20 MR. LEWIS: Offer Plaintiffs'  
 21 Exhibit G-30.1.  
 22 MR. GRAHAM: No objection.  
 23 THE COURT: 30.1 will be admitted  
 24 without objection.  
 25 BY MR. LEWIS:

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1 Q Have you looked at this letter recently?  
 2 A No, sir.  
 3 Q Could you just skim it real quick, and  
 4 I'll just ask you about two questions about it.  
 5 A Okay, sir.  
 6 Q Does this letter suggest that the dust  
 7 concentrations that were measured are from ten to a  
 8 hundred times in excess of the safe limit?  
 9 A That's what it states, yes.  
 10 Q Does it have -- On the second page, does  
 11 it have the raw data or the measurements that were  
 12 taken?  
 13 A Yes, sir.  
 14 Q At the second, fifth and sixth floor of  
 15 what?  
 16 A Undoubtedly the dry mill.  
 17 Q Okay. Okay. Does it also conclude that  
 18 it is likely that a hazardous asbestos exposure does  
 19 exist?  
 20 A That's what it states, yes, sir.  
 21 MR. LEWIS: 47.2.  
 22 BY MR. LEWIS:  
 23 Q Have you seen this document before, sir?  
 24 A Yes, sir.  
 25 Q And is this a May 18-21, 1971, report from

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1 the United States Department of the Interior Bureau  
 2 of Mines?  
 3 A Yes, sir.  
 4 Q And did you folks at W.R. Grace receive  
 5 this in the regular and usual course of your  
 6 business?  
 7 A Yes, sir.  
 8 Q And does it relate to your mine and mill?  
 9 A Yes, sir.  
 10 Q Does it document -- Well, has it been  
 11 maintained in the regular and usual course of the  
 12 business of W.R. Grace?  
 13 A I believe so, yes, sir.  
 14 Q And does it appear to be a genuine copy of  
 15 the document that you saw at or near the time it was  
 16 issued?  
 17 A Yes, sir.  
 18 MR. LEWIS: Move the admission of  
 19 G-47.2.  
 20 MR. GRAHAM: No objection.  
 21 THE COURT: 47.2 will be admitted  
 22 without objection.  
 23 BY MR. LEWIS:  
 24 Q Does this document conclude that you have  
 25 significant problems associated with asbestos



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1 exposure to your employees in the -- near the middle  
2 of 1971?  
3 A Yes, sir, it indicates that.  
4 Q And specifically documents problems with  
5 sweepers working in the old dry mill? Near the  
6 bottom of page 4.  
7 A Yes.  
8 Q It says, "Two sweepers were sampled; both  
9 were exposed to seven times the proposed TLV. They  
10 were required to wear respirators in the dry mill on  
11 all but the first floor. During the sweeping and  
12 cleanup process, the settled dust, while being  
13 swept, fell through the cracks in the floor and  
14 added to the ambient dust load in the air." Do you  
15 see that?  
16 A This is on page 4, sir?  
17 Q Maybe we've got another page enumeration  
18 problem.  
19 THE COURT: Six, I think.  
20 MR. LEWIS: See, it's numbered 4 on  
21 this one (indicating).  
22 THE WITNESS: Okay.  
23 BY MR. LEWIS:  
24 Q Do you see that there, sir?  
25 A Yes, sir, I do.

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1 Q Does it -- It indicates that company  
2 officials involved in this inspection report  
3 included Mr. Oliverio, the manager; is that true?  
4 A Yes.  
5 Q Mr. Luther Krupp, Mine Superintendent and  
6 Mr. John Riggleman, Mill Superintendent, correct?  
7 A Yes, sir.  
8 Q Conclusions and Recommendations, it says  
9 the exposures in the dry mill -- This would be about  
10 page 6 I think, under Conclusions and  
11 Recommendations. Do you see that?  
12 A Yes, sir.  
13 Q Conclusions and Recommendations. "In  
14 summation, exposures in the dry mill and associated  
15 areas were high." Do you see that?  
16 A Yes, sir.  
17 Q Then it goes down to third paragraph,  
18 "Dusty conditions existed at the concentrate  
19 loading bins ..." Where was that at?  
20 A That was down at the storage and the  
21 loading place on the banks of the Kootenai River.  
22 Q And at that time it remarks that the new  
23 mill was to be constructed around 1972, right?  
24 A That's what this states, yes, sir.  
25 Q Now, I want to talk to you a little bit

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1 about that new mill. You -- The new mill was -- It  
2 took awhile to get it on line, and you believe it  
3 went on line in '74, right?  
4 A Yes, sir.  
5 Q You believe in '74 the old dry mill  
6 closed?  
7 A Yes, sir.  
8 Q You don't remember what month it was?  
9 A Well, as I remember, the new mill went on  
10 stream early in the year, like in March or April,  
11 but I believe that the -- the old dry mill operated  
12 at least once after that for a very short period of  
13 time, maybe four days.  
14 Q Weren't there problems with the new mill  
15 that caused the dry mill to go on into -- at least  
16 into 1975 and perhaps into '76?  
17 A No, sir, I don't believe it ever operated  
18 in '75 and '76.  
19 Q You don't recall that?  
20 A No, sir.  
21 Q Well, in any event, the new mill used a  
22 wet process, right?  
23 A Yes, sir.  
24 Q And there is advantages to the wet process  
25 because there is not as much asbestos in the air,

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1 correct?  
2 A Yes, sir.  
3 Q But even in the wet mill, the new mill,  
4 there was mud that would cake on equipment and  
5 things, and on the men; is that correct?  
6 A In some places, yes, sir, the asbestos  
7 could cake on some of the machinery.  
8 Q It would cake on machinery and it would  
9 cake on their clothes, correct?  
10 A Well, I don't know. There shouldn't have  
11 been much reason for them to come in contact to have  
12 it cake on their clothes.  
13 Q If some employees were to come before this  
14 court and testify that they had to get up to their  
15 knees in asbestos contaminated mud to do their work  
16 from time to time, would that be incorrect?  
17 A No, I can't -- I couldn't say that that  
18 was incorrect.  
19 Q In any event, mud would get on the men's  
20 clothing; is that correct?  
21 A Could, yes, sir.  
22 Q And then -- When it was wet and in a mud  
23 form it might be more likely to stick to their  
24 clothing than if it were in a dry form, correct?  
25 A That could be, yes, sir.

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1 Q And they could carry it around with them  
2 on the facility; is that right?  
3 A Possibly.  
4 Q And take it home, mud on their clothes,  
5 correct?  
6 A Possibly.  
7 Q And when the mud dried, what would happen  
8 to the substance? Would it be released into the  
9 air?  
10 MR. GRAHAM: Objection, calls for  
11 total speculation.  
12 MR. LEWIS: If you know.  
13 THE COURT: If he knows, he can  
14 testify.  
15 THE WITNESS: I don't know. If it  
16 were not -- If it were not handled or so on, I  
17 don't know any reason why it wouldn't disintegrate  
18 and vaporize and get into the air.  
19 BY MR. LEWIS:  
20 Q Well, it was a fine mud, right?  
21 A Well, it was mud made up of fine  
22 particles, yes, sir.  
23 Q And what was its consistency? Like  
24 ketchup?  
25 A No, I think when it was caked on the

1 A I don't recall.  
2 Q Could that have happened?  
3 A I suppose it could, but there would be  
4 very little -- there would be very little reason why  
5 that mud would get on anybody's clothing.  
6 Q Did you ever see any of that mud on  
7 anybody's clothing?  
8 A Not that I recall, no, sir.  
9 Q But if it did get on somebody's clothing,  
10 they could take it right home with them, couldn't  
11 they?  
12 MR. GRAHAM: Calls for speculation  
13 again, Your Honor.  
14 THE COURT: Sustained.  
15 BY MR. LEWIS:  
16 Q Did the men have to work around the  
17 machinery with the mud caked on them?  
18 A Well, that machinery was an integral part  
19 of the concentration process in the mill and  
20 ordinarily the machinery where the mud would cake  
21 would be entirely covered with water.  
22 Q Well, in any event, you said it's  
23 conceivable that men could get mud on their clothing  
24 and that this mud would be almost pure asbestos,  
25 right?

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1 machinery, it was solid.  
2 Q When it was wet, what was its consistency?  
3 A It would be the same way. If it was caked  
4 on there, it would be solid.  
5 Q Well, did the wet mill process the  
6 vermiculite in a wet form?  
7 A Yes, sir.  
8 Q So there -- In the mud, there would be  
9 vermiculite contaminated with asbestos; isn't that  
10 the way it worked?  
11 A There could be, but generally when it  
12 caked on the machinery it was pretty well  
13 concentrated and most of the material was asbestos.  
14 Q Most of it was asbestos?  
15 A Yes, sir.  
16 Q Okay. So the mud had a much higher amount  
17 of asbestos in it even than the ore, right?  
18 A Yes, sir.  
19 Q It was almost pure asbestos?  
20 A Yes, sir.  
21 Q And the mud would get on men's clothing --  
22 Did you ever go into the wet mill?  
23 A Many times.  
24 Q Did you ever get mud splashed on your  
25 pants or anything like that?

1 A Yes, sir, I said that.  
2 Q And what would happen to that asbestos  
3 after it dried on their clothing, and wherever they  
4 would be, that would be just peer speculation,  
5 according to you; isn't that right?  
6 A Yes, sir, I don't know.  
7 Q You would have no reasonable expectation  
8 of what would happen to that mud on that clothing?  
9 A No, I don't know.  
10 Q What about this other support equipment  
11 associated with the wet mill? Were there other  
12 areas where the men were exposed to asbestos  
13 fibers? Were there tunnels or something like that?  
14 A Not on a regular basis, no, sir.  
15 Q How did the asbestos get to the wet mill?  
16 A It would have been in the mill feed.  
17 Q Just like it went to the dry mill?  
18 A Yes, sir.  
19 Q What happened to the mud? What happened  
20 to the asbestos mud? Did you have to routinely  
21 remove it, discard it or what?  
22 A I don't really know.  
23 Q Well, if you had asbestos mud almost  
24 100 percent tremolite asbestos mud accumulating in  
25 the process, at some point you would to to get rid

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1 of this waste; is that correct?  
 2 A Yes.  
 3 Q Where would that waste go?  
 4 A We're not talking about large quantities  
 5 here, I would like to point out.  
 6 Q We're talking about pure asbestos, right?  
 7 A If it -- If and when it was removed from  
 8 the machinery, it would go out with the mill  
 9 tailings.  
 10 Q So how would it get out to the mill  
 11 tailings?  
 12 A It would be put -- It would be put on a  
 13 tailings belt or in a -- in the slurry that was  
 14 pumped to the mill tailings pond.  
 15 Q And would it -- Would the men have to get  
 16 in proximity to the tailings belt at any time when  
 17 it was working?  
 18 A Well, yes -- Yes.  
 19 Q Any other place where the men would come  
 20 into contact with fly-able or air-borne asbestos?  
 21 A Well, one place that that could happen  
 22 would be in the dryer area. And the dryer was in an  
 23 enclosed room. But there would be no workers there  
 24 at all times. Once in a while they would have to  
 25 get in there. There was -- Above the dryer there

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1 was a large bag house, and the bags would have to be  
 2 changed, and anybody that went into that bag house,  
 3 they would have to be wearing respirators. And I  
 4 believe that there were -- there were pressure suits  
 5 in there also for those people.  
 6 Q Okay. Now Mr. Schnetter was an  
 7 electrician after he left the old dry mill; did you  
 8 understand that to be correct?  
 9 A Yes, sir.  
 10 Q And an electrician, would that job require  
 11 him to work all over the mill site?  
 12 A Yes, sir, he -- An electrician could work  
 13 anywhere in the operation.  
 14 Q He could work in an area where they had an  
 15 accumulation of that pure tremolite asbestos mud?  
 16 A Yes, sir.  
 17 Q He might have to work around that  
 18 machinery that had that mud on it?  
 19 A Possibly.  
 20 Q He might have to work on the conveyor  
 21 system?  
 22 A Possibly.  
 23 Q And that would be the conveyor system  
 24 where the pure tremolite asbestos mud would be  
 25 discarded with the tailings, correct?

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1 A Yes. There would -- The conveyor systems  
 2 in the new mill were very limited and most of the  
 3 tailings were handled in the slurry. And -- Which  
 4 meant that the solids were mixed with water and  
 5 pumped to a point.  
 6 Q And would these be taken to a tailings  
 7 pond?  
 8 A Some of it would, yes.  
 9 Q And what would the rest -- where would the  
 10 rest of it go?  
 11 A It would be dumped on the side of the  
 12 mountain.  
 13 Q So some of that pure asbestos mud would go  
 14 on the side of the mountain and some of it would go  
 15 in the tailings pond; is that correct?  
 16 A Yes, sir.  
 17 Q Did you ever go out and look at the side  
 18 of the mountain to see where that mud was and what  
 19 would happen to it, that pure asbestos when it dried  
 20 out?  
 21 A I was out there and looked at the tailings  
 22 pile many times. I don't ever remember looking at  
 23 the asbestos.  
 24 Q Once that pure asbestos was in that water,  
 25 like a mud, it was no longer trapped in the ore; is

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1 that correct?  
 2 A That's correct.  
 3 Q Would you agree with me, just based upon  
 4 your ordinary experience as a human being, that if  
 5 some of that asbestos mud had dried on something and  
 6 you gave it a kick, you could release asbestos  
 7 fibers?  
 8 MR. GRAHAM: Objection, relevancy,  
 9 speculation.  
 10 THE COURT: Overruled. You may  
 11 answer if you know, Mr. Lovick.  
 12 THE WITNESS: Well, I don't know.  
 13 I think the likelihood of that is very, very remote,  
 14 because there would be no occasion that I know of  
 15 that someone would be walking down there.  
 16 BY MR. LEWIS:  
 17 Q But was it open to the weather?  
 18 A Yes, sir.  
 19 Q Could it be disturbed by the weather?  
 20 A I suppose it's possible, but I think it's  
 21 very unlikely.  
 22 Q Could it be diluted by rain and snow and  
 23 spread around?  
 24 A I don't know how it would react.  
 25 Q Well, you do know one thing, there was

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1 100 percent asbestos mud that was being discarded on  
2 the side of that mountain and in the tailings pond,  
3 right?

4 A Yes, sir.

5 Q And the tailings pond was open also,  
6 right? It wasn't covered by anything?

7 A No, sir. It was covered by water.

8 Q Well, the mud that went over the side of  
9 the mountain, that wasn't covered by water and the  
10 rain could get on that, take it right down the  
11 mountain; is that right?

12 A Yes, sir.

13 Q All right. What about, was there an area  
14 where there was a tunnel or anything that an  
15 electrician would have to work in?

16 A Well, yes, there were -- Yes, there were.

17 Q Was there asbestos fibers in that tunnel?

18 A Yes, sir, there could be.

19 Q And there was -- Was there a problem with  
20 the ventilation system in any of those tunnels?

21 A Yes, sir.

22 Q So once that asbestos got worked up, those  
23 fibers, it may not easily be ventilated; is that  
24 correct?

25 A I don't know if that's correct or not.

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1 I don't know whether those ventilation shafts would  
2 become clogged.

3 Q The electricians had to work in the  
4 ventilation shafts; is that right?

5 A I'm sure they did at times, yes, sir.

6 Q Okay. Well, I'm just about done here,  
7 sir. I want to ask you a couple questions about the  
8 nature of the exposure up there at your W.R. Grace  
9 facility. Let's take your situation. How many  
10 years did you work up there?

11 A Thirty-five.

12 Q There were other men that worked up there  
13 for 35 years; is that correct?

14 A Yes, sir.

15 Q And some of them were exposed to asbestos  
16 for 35 years, right?

17 A Yes, sir, that's possible.

18 Q There is an interesting statement in  
19 Plaintiffs' Exhibit ZZ. And it talks about  
20 Mr. Gidley. And I don't want to get into the  
21 particulars of Mr. Gidley because that's really not  
22 relevant here, except that it says -- One thing, it  
23 says that, He had 211 fiber-years exposure to  
24 asbestos. Do you see that?

25 A Yes, sir.

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1 Q I want to talk about that. What's a  
2 fiber year of asbestos exposure?

3 A That's being exposed to one fiber of  
4 asbestos for a year's time in the atmosphere.

5 Q How did you make that determination that  
6 he had 211 fiber-years exposure?

7 A It was done by classifying all of the jobs  
8 at the operation, and what the average exposure  
9 would be to these people at each one of their jobs.  
10 And these -- In the various jobs they had, there was  
11 the total of fiber exposure they would be exposed  
12 to over the time that they had worked at that job,  
13 and all of these would be -- would be added together  
14 and the total employment would be divided into that  
15 and that would give you the number of fiber years.

16 Q Who worked up that system of determining  
17 fiber years?

18 A It was done by statistician at McGill  
19 University.

20 Q But one could have 211 fiber years of  
21 exposure with only 30 years of work if the exposure  
22 was in a real bad place, right?

23 A Yes, sir.

24 Q And if one were in the old dry mill for,  
25 say, a year and a half or two years, one could have

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1 20 fiber years of exposure from just that short  
2 period of time; is that correct?

3 A You could put any number on there and it  
4 would be possible.

5 Q Okay. Did you keep fiber years of  
6 exposure for the employees right up until the end?

7 A No, sir.

8 Q That was something that was done early  
9 on?

10 A No, sir.

11 Q When was it done?

12 A It was done in 1983 and '84 as part of the  
13 McGill study.

14 Q The McGill study, did it include everybody  
15 that had ever worked there?

16 A No, sir.

17 Q Who did it include?

18 A It included -- They had what was known as  
19 a cohort list. There was four hundred and some  
20 employees on that. In order to be placed on the  
21 cohort list, it was somebody that had been hired in  
22 1963 or before and had worked one or more years at  
23 the operation.

24 Q So it excluded every employee who was  
25 hired after W.R. Grace acquired the mill; is that

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1 correct?

2 A Yes, sir.

3 Q That would have excluded Dan Schnetter; is  
4 that correct?5 A Well, let me clarify that. He would have  
6 been excluded in the conclusions of the study, but  
7 his fiber years would have been calculated and part  
8 of -- it would have been part of the records. But  
9 he would not have been in the statistics that made  
10 up the study.11 Q All right. Couple more areas, then we're  
12 going to be finished here. Mr. Melcher was -- held  
13 the position of safety supervisor or trainer  
14 sometime in the '70s; is that correct?

15 A Yes, sir.

16 Q What was that position?

17 A Well, he was -- After the MSHA law was  
18 passed that new miners were required to have  
19 training -- above-ground miners, 24 hours of  
20 training before they could go to work, and  
21 underground miners 40 hours before they were allowed  
22 to go to work, he was responsible for drawing up the  
23 training programs and administering these training  
24 programs to these employees and new hires. It was  
25 also a requirement that each employee would have

1 A Yes.

2 Q You picked the kids who would be included  
3 in the cohort list?

4 A Well, yes, sir.

5 Q And not everybody who worked before 1963  
6 was included in the cohort list; is that correct?7 A If they worked a year or more, they were,  
8 yes, sir.

9 Q Even the ones that couldn't be found?

10 A They would have been on the cohort list,  
11 yes, sir.12 Q Okay. But this McGill study was dependent  
13 upon the accuracy of what you reported to some  
14 degree; is that true?

15 A Yes, sir.

16 Q And if what you reported was not accurate,  
17 then the study was flawed, correct?

18 A Well, yes.

19 (A discussion was held off the record.)

20 MR. LEWIS: Exhibit 53.1, please.

21 BY MR. LEWIS:

22 Q Mr. Lovick, I'm handing you what has been  
23 marked as Exhibit 53.1. Have you seen that document  
24 before?

25 A Yes, sir, I believe so.

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1 eight hours of training each year and he was  
2 responsible for doing that training.3 Q When did the MSHA training requirements  
4 come into existence?

5 A I don't remember.

6 Q Was it 1979?

7 A I don't remember.

8 Q Okay. When Mr. Melcher retired, do you  
9 remember when that was?

10 A No, sir.

11 Q Do you know who took his place?

12 A No, sir.

13 Q Who would know that?

14 A Mr. Melcher, I would assume.

15 Q Did you ever attend any of Mr. Melcher's  
16 training sessions?

17 A Yes, sir.

18 Q Did you provide most of the data for the  
19 McGill study? You, personally?20 A I gathered the majority of the data, yes,  
21 sir.22 Q Nobody else provided any data for the  
23 McGill study besides you; is that true?

24 A No, that would not be true.

25 Q You gathered all the data?

1 Q Did you folks receive that in the regular  
2 and usual course of the business at W.R. Grace and  
3 Company?

4 A Yes, sir.

5 Q Is it a document that's regularly  
6 maintained in the records of W.R. Grace?

7 A Yes, sir.

8 MR. LEWIS: I move the admission of  
9 Exhibit 53.1, Your Honor.10 MR. GRAHAM: Just so that we're  
11 talking about the same thing, is that the Bureau of  
12 Mines -- or MSHA -- MESA report of October 2nd  
13 through 4th, 1973?14 MR. LEWIS: No, that's the October 2  
15 through 4, 1973.

16 MR. GRAHAM: This one.

17 MR. LEWIS: Right.

18 MR. GRAHAM: No objection, Your  
19 Honor.20 THE COURT: G-53.1 will be admitted  
21 without objection.22 MR. LEWIS: Would you look at  
23 Exhibit 50? I think it's already in evidence.

24 BY MR. LEWIS:

25 Q Do you have Exhibit 50?

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1 A Yes, sir.  
 2 Q Were you folks issued a violation -- a  
 3 notice violation as part of that report of May --  
 4 excuse me, October 21, 1971?  
 5 A We were issued a notice.  
 6 Q Were you informed that asbestos fiber  
 7 concentration in the dry mill and portions in the  
 8 river transfer facilities exceeded the threshold  
 9 limits for asbestos?  
 10 A Yes, sir.  
 11 Q And time allowed to abate this violation  
 12 was to May 15, 1972; is that correct?  
 13 A Yes, sir.  
 14 MR. LEWIS: Now, I move the admission  
 15 of G-53.1, Your Honor. It's in, I guess.  
 16 MR. GRAHAM: That was already --  
 17 THE COURT: That's already been  
 18 admitted.  
 19 MR. GRAHAM: -- been admitted.  
 20 THE COURT: 53.1 has.  
 21 MR. LEWIS: Is 50 in?  
 22 THE COURT: 50 -- I don't have a  
 23 record of 50.  
 24 MR. GRAHAM: I believe --  
 25 THE COURT: The clerk says she

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1 doesn't have a record of 50.  
 2 BY MR. LEWIS:  
 3 Q You have 50 in front of you; is that  
 4 correct?  
 5 A Yes, sir.  
 6 Q And that was received by you folks and  
 7 maintained in the regular course of your business  
 8 activities?  
 9 A Yes, sir.  
 10 MR. LEWIS: Okay, offer G-50.  
 11 MR. GRAHAM: No objection.  
 12 THE COURT: 50 will be admitted  
 13 without objection.  
 14 BY MR. LEWIS:  
 15 Q Now the notice violation that was to be  
 16 abated in 1972 was not abated; is that correct?  
 17 A I don't remember.  
 18 Q Look at page 3 of Exhibit 53.1. Did --  
 19 Does that state that asbestos fiber concentrations  
 20 in the dry mill still exceeded the TLV's?  
 21 A Yes, sir.  
 22 MR. LEWIS: Your witness.  
 23 (Whereupon, after a discussion at the  
 24 bench, Court was adjourned for the day.)  
 25

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